IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 913 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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SHANTILAL RATILAL DABBAWALA

Versus

RASILABEN RATILAL PATEL THRO' P.O.A.

Appearance:

1. Civil Revision Application No. 913 of 2002

MR SB PANDIT for Petitioner No. 1

MR SHAILESH C PARIKH for Petitioner No. 1

MR VC DESAI for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 07/08/2002

ORAL JUDGEMENT

Heard the learned Advocates for the parties and perused the papers.

This is a revision application under sub-section (2) of section 29 of the Bombay Rents Hotels, Lodging and Rates (Controls) Act, 1947 (for short, 'the Act') challenging the judgments and decrees recorded by the two courts below for eviction of the petitioners from the tenanted property. The respondent herein preferred Civil Suit being Civil Suit No.36/87 before the learned Civil Judge (JD), Khambhat for eviction of the petitioner from the tenanted property on the ground of non-payment of arrears of rent as well as on the ground of personal requirement. The suit was resisted by the petitioners and after hearing the evidence and arguments of the learned Advocates for the parties, the learned Trial Judge found that the respondents had proved the ground of non-payment of arrears of rent. However, the ground of personal requirement was not held to be proved and, therefore, the decree was passed by the learned Civil Judge in favour of the respondent for eviction of the petitioners from the tenanted property by order dated 23.8.1996.

2. Feeling aggrieved by the said judgment and decree of the trial court, the petitioner preferred Regular Civil Appeal No.90/96 before the District Court at Kheda. The learned 4th Extra Asstt. Judge, Kheda at Nadiad, heard the learned advocates for the parties and came to a decision that the learned Civil Judge was perfectly justified in granting a decree for eviction of the petitioner from the tenanted property on the ground of non-payment of arrears of rent under section 12 of the said Act. Therefore, the appeal was dismissed and the judgment and decree of the trial courts were confirmed. Feeling aggrieved by the judgment and decree of the District Court, the petitioner-original defendant-tenant has preferred this revision application. It has been mainly contended that the trial court has committed serious illegality in holding that the petitioner was a tenant in arrears or rent under section 12 of the said Act and, therefore, both the courts have committed illegality in awarding a decree to the respondent and against the petitioner. That therefore, this revision application may be allowed and the judgments and decrees passed by the two courts below be quashed and set aside. At the inception of this revision, Mr V C Desai, learned Advocate has appeared on caveat and, therefore, I have heard the learned Advocates for the parties and have perused the papers. It is amply clear that the learned Civil Judge had gone through the evidence produced before him and after hearing the evidence, the learned Judge came to the decision that the suit was required to be decreed in view of the provisions of section 12(3)(a) of

the said Act. Same way, the District Court has also confirmed the said finding. This means that the two courts have recorded concurrent findings of fact that the present petitioner was a tenant in arrears of rent for more than six months on the date of notice under section 12(2) of the said Act and he neglected to make payment of rent then due within one month from the date of receipt of the demand notice and, therefore, there was no option with the Court but to award decree for eviction of the petitioner from the tenanted property. Strenuous efforts were made on behalf of the petitioner to argue that the rent was not payable by month and it was not monthly tenancy and, therefore, the case would not be governed under section 12(3)(a). It is true that a case would fall under section 12(3)(a) of the said Act only if following five ingredients are satisfied:

(i) Rent is payable by the month;
(ii) The tenant is in arrears of rent for six months or more;
(iii) Notice has been issued under section 12(2) of the said Act;
(iv) There is no dispute about the standard rent within one month from the date of receipt of demand notice under section 12(2) of the Act;
(v) Tenant has neglected to make payment of rent then due within one month from the date of receipt of notice.

3. Therefore, if the rent is not payable monthly the case would not be governed by section 12(3)(a) of the said Act. Therefore, efforts were made to show that rent was not payable by the month. It has been argued here that permitted increase were required to be borne by the petitioner. On this aspect of the case, the law has been well settled that even if the permitted increase are required to be considered and though the same are not payable by month, the contract for tenancy does not get a different shape and even on that aspect, the rent continues to be payable by month. In that view of the matter, the rent has to be treated to be payable by month. Therefore, it was a monthly tenancy and consequently the case would be governed by section 12(3)(a) of the Act. So far as the other aspects of the case are concerned, it is not much in dispute that the two courts below have recorded concurrent finding of fact that the tenancy was monthly tenancy and the present petitioner was a tenant in arrears of rent for a period exceeding six months and that he neglected to make payment within the due date i.e. within one month from

the date of receipt of the demand notice. Therefore, the two courts below were obliged to pass decree for eviction of the petitioner from the tenanted properties. Learned Advocates for the parties have taken me through the records of the case and it is not possible for me to agree with the arguments of the learned Advocate for the petitioner that the petitioner was not a tenant in arrears of rent as recorded by the two courts below. Since the findings of facts have been concurrently recorded by the courts below and since the findings are not against the weight of evidence, it is not possible for this court to lightly brush aside the said findings. In above view of the matter, it is amply clear that those findings of facts recorded by the two courts below are in accordance with the evidence on record and there is no scope for interference with those findings while exercising revisional jurisdiction. Once it is found that the petitioner was a tenant in arrears of rent and he neglected to pay rent within one month from the date of receipt of demand notice, there is no alternative or option left with the court and even this court has to confirm those findings and once those findings are confirmed, there is no discretion or option left with the Court and, therefore, the decree for possession has to follow.

4. For the foregoing reasons, it is found that there is absolutely no merit in this application and the same deserves to be dismissed. In above view of the matter, this revision application is dismissed. No order as to costs.

5. At this stage, learned Advocate for the petitioner states that the petitioner is a poor man and it would be necessary for the petitioner to make arrangement for alternative accommodation and, therefore, some time may be granted. Looking to the facts and circumstances of the case, the petitioner is given time upto 31.12.2002 for vacating the rented premises and for handing over vacant possession thereof to the respondent on condition to submit usual undertaking on oath before this court in respect of the petitioner and other members of the family residing with him in the suit premises. The said undertaking shall be submitted before this Court within one month.

7.8.2002 [D P Buch, J.]
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